

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
11

12 DARREN CORNELIUS STANLEY,

13 Petitioner,

14 v.

15 Michael MARTEL, Acting Warden of
16 San Quentin State Prison,

17 Respondent.

Case Number 3-7-cv-4727-EMC

DEATH-PENALTY CASE

**ORDER GRANTING IN PART AND
DENYING IN PART SECOND
MOTION FOR EQUITABLE
TOLLING**

[Doc. No. 17]

18 Petitioner is a condemned inmate at San Quentin State Prison. On September 13, 2007,
19 Petitioner initiated the present capital habeas action when he asked the Court to appoint counsel
20 and to stay his execution pending the completion of this action. (*See* Doc. No. 1.) The Court
21 granted Petitioner's requests in part and referred the matter to the Court's Selection Board for the
22 recommendation of counsel to represent Petitioner. (Doc. No. 3.)

23 On July 8, 2010, proceeding pro se, Petitioner filed a protective petition for a writ of
24 habeas corpus, (Doc. No. 5), in an attempt to preserve his right to federal habeas review in the
25 event that the one-year statute of limitations applicable to federal habeas petitions, 28 U.S.C.
26 § 2244(d)(1) (2006), was not equitably tolled, (Doc. No. 8 at 3). Petitioner also filed a pro se
27 motion for equitable tolling, (*id.*), which the Court determined to be premature and accordingly
28 denied without prejudice, (Doc. No. 10).

1 The Court appointed counsel for Petitioner on February 11, 2011. (Doc. No. 11.)
2 Petitioner, through counsel, has filed a second motion for equitable tolling, (Doc. No. 17), which
3 is presently before the Court. Petitioner seeks equitable tolling until the date of counsel's
4 appointment so that his counsel may have one year to prepare a finalized petition.¹

5 The Supreme Court of the United States has held that "the timeliness provision in the
6 federal habeas corpus statute is subject to equitable tolling." *Holland v. Florida*, 560 U.S. ___,
7 130 S. Ct. 2549, 2554 (2010). A federal habeas petitioner "is entitled to equitable tolling only if
8 he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary
9 circumstance stood in his way and prevented timely filing." *Id.* at 2562 (internal quotation
10 marks omitted).

11 An indigent capital habeas petitioner has a statutory right to counsel. 18 U.S.C.
12 § 3599(a)(2) (2006). This right includes "a right to legal assistance in the preparation of a
13 habeas corpus application," *McFarland v. Scott*, 512 U.S. 849, 856 (1994), due to the complexity
14 of capital habeas proceedings and the seriousness of the death penalty, *id.* at 855–56. As the
15 Court observed in its order denying the first motion for equitable tolling, "a capital habeas
16 petitioner is generally entitled to equitable tolling during the time that a court is seeking counsel
17 to appoint to represent the petitioner," (Doc. No. 10 at 2), because the lack of appointed counsel
18 is an extraordinary circumstance beyond the petitioner's control that often makes it impossible
19 for a petitioner to file an otherwise timely petition that has been prepared with the assistance of
20 counsel. "Indeed, it is frequently the case that were court to hold otherwise, a capital habeas
21 petitioner's right to counsel would be thoroughly eviscerated." (*Id.* (internal quotation marks,
22 brackets, and citation omitted).)

23 However, this general principle does not mean that a grant of equitable tolling is
24 automatic in capital habeas actions in which counsel is not promptly appointed, for "often the
25 exercise of the court's equity powers must be made on a case-by-case basis." *Holland*, 130 S.

26
27
28 ¹ In capital habeas actions, "[t]he term 'finalized petition' shall refer to the petition filed by
retained or appointed counsel. . . ." Habeas L.R. 2254-28(a).

1 Ct. at 2554. When deciding whether equitable tolling is appropriate in a particular action, courts
2 consider the particularities of the action, such as a petitioner's diligence, in addition to the
3 general right to counsel. For example, in *Smith v. Ayers*, No. 3-4-cv-3436-CRB, (N.D. Cal. Jan.
4 8, 2009), the court granted equitable tolling in consideration of the complexity of the matter in
5 conjunction with the capital habeas petitioner's right to counsel. Slip op. at 2.

6 Respondent does not oppose Petitioner's motion outright. Rather, he contends that the
7 motion is premature because Petitioner has not presented any such particularities regarding the
8 present action. (Doc. No. 18.) However, since the motion was filed, Respondent has lodged the
9 state-court record with this Court. (Doc. No. 22.) A review of that extremely voluminous record
10 demonstrates that this matter is extraordinarily complex. In addition, Petitioner's counsel aver
11 that, in their professional judgment, the pro se protective petition "is wholly inadequate for any
12 purpose." (Doc. No. 17 at 9; *see id.* at 12–14.) Moreover, Petitioner has been diligent in
13 pursuing his rights, as he initiated the present action while his state habeas petition was pending,
14 *cf. In re Stanley*, No. S106165 (Cal. July 8, 2009), and the federal limitations period was thereby
15 statutorily tolled, *see* 28 U.S.C. § 2241(d)(2).² Considering these facts along with Petitioner's
16 right to the assistance of counsel in preparing a petition, the Court finds that Petitioner will
17 require at least a year from counsel's appointment to prepare and to file a finalized petition,
18 which is the petition that he is statutorily entitled to file. *See McFarland*, 512 U.S. at 858 ("the
19 right to counsel necessarily includes a right for that counsel meaningfully to research and present
20 a defendant's habeas claims").

21 This does not mean, however, that Petitioner is entitled to have his motion granted in full.
22 As noted in the order denying the first motion for equitable tolling, "[t]he Court's equitable
23 powers are broad, but they must be used as sparingly as possible." (Doc. No. 10 at 3.) There is
24 no need for equitable tolling for otherwise timely claims, such as claims that also appear in the
25

26 ² Indeed, Petitioner has been extraordinarily diligent, as he sought federal counsel nearly two
27 years before his state habeas petition was denied. Petitioner would have been on even firmer ground if he
28 had initiated federal proceedings while his state appeal was pending, as the Court might have found
Petitioner to have been dilatory if his entire state habeas petition had been denied as untimely.

1 pro se protective petition if they were thereby rendered timely, or claims that relate back to
2 timely claims in that petition. Petitioner is entitled to equitable tolling only for claims in the
3 finalized petition that are not otherwise timely.

4 Accordingly, and good cause therefor appearing, Petitioner's second motion for equitable
5 tolling, (Doc. No. 17), is granted as to claims that otherwise would be untimely and denied as to
6 claims that are otherwise timely. Petitioner shall file his finalized petition on or before
7 February 10, 2012.

8 This order disposes of Docket No. 17.

9
10 IT IS SO ORDERED.

11
12 DATED: July 26, 2011

13 
EDWARD M. CHEN
United States District Judge